

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

WASHINGTON INTERNATIONAL
INSURANCE COMPANY
Plaintiff

V.

No. 2:98-CV-67-B-B

BOARD OF SUPERVISORS,
TATE COUNTY
Defendant

MEMORANDUM OPINION

This cause comes before the court upon the defendant's motion to dismiss. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

FACTS

The defendants are in the process of restoring the Tate County Courthouse. The defendants entered into a contract with architect Belinda Stewart, whereby Stewart was to provide all of the necessary architectural and engineering services for the design and construction of the restoration project. Walton Construction Company was awarded the construction contract. As a condition of the contract, Walton provided a performance bond issued through the plaintiff, Washington International Insurance Company.

In September of 1997, Walton became delinquent in the payment of suppliers and subcontractors. The defendant declared Walton in default and terminated the contract. In accordance with the terms of the performance bond, the defendant demanded that the plaintiff arrange for completion of the project. At that time, the defendant had paid Walton \$500,000.00 for work that had been completed and certified by Stewart as being performed in accordance with the construction contract.

The plaintiff obtained bids for the completion of the project. Before acceptance of a completion bid, the defendant demanded that all work performed by Walton be demolished. The plaintiff refused to do so and filed this declaratory judgment action to determine the rights and

obligations of the parties under the performance bond. Subsequent thereto, the defendant filed suit against the plaintiff and Walton in the Circuit Court of Tate County, Mississippi. The state action remains pending at this time.

LAW

The defendants' motion is brought pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure for failure to join parties needed for just adjudication under Rule 19. Specifically, the defendant asserts that under the provisions of Rule 19, Walton and Stewart are both indispensable parties and that the court should not proceed in their absence. Rule 19(a) provides:

Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if

(1) in the person's absence complete relief cannot be accorded among those already parties, or

(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may

(i) as a practical matter impair or impede the person's ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

If the court determines that a person is an indispensable party under Rule 19(a), but joinder of the necessary party is not feasible, the court must look to Rule 19(b), which provides:

Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

All of the plaintiff's obligations under the performance bond arise out of the construction contract. Furthermore, central to this case is the key issue of whether the work completed by Walton complies with the terms of the construction contract. Thus, to determine the rights and

obligations of the parties under the performance bond, the court must review the terms of the construction contract. The architect's contract may likewise need to be reviewed, since the plaintiff places Stewart's performance at issue as well in regard to certification of the work. Any determination by this court as to Walton's and Stewart's obligations under their respective contracts could leave them, as well as the plaintiff and defendant, subject to double, multiple, or otherwise inconsistent obligations. Walton and Stewart are thus needed for just adjudication under Rule 19(a); however, since both parties are Mississippi residents and their claims are potentially adverse to those of the defendant, their joinder would destroy the diversity of citizenship upon which jurisdiction is based. Due to a lack of diversity of citizenship, Walton and Stewart can neither be parties to this action nor can the defendant sue Walton and Stewart in federal court and seek to have the cases consolidated.

Having determined that joinder is not feasible, the court must look to the provisions of Rule 19(b) to determine whether the court may proceed in their absence. Considering the aforementioned factors listed in Rule 19(b), the court finds that this cause of action should be dismissed rather than proceed in the absence of Walton and Stewart. Specifically, the court finds that any judgment rendered in their absence might be prejudicial to either the plaintiff or the defendant, any judgment rendered in their absence will not be adequate, and the plaintiff does have an adequate remedy in state court if the case is dismissed for non-joinder. The proper course of action for resolving the parties' differences would be for Washington International, Tate County, Walton, and Stewart to litigate their various claims in a single proceeding, which, under these circumstances, must necessarily be held in state, rather than federal, court.

CONCLUSION

For the foregoing reasons, the court finds that the defendant's motion to dismiss should be granted. An order will issue accordingly.

THIS, the ____ day of April, 2001.

NEAL B. BIGGERS, JR.
CHIEF JUDGE